



July 10, 2001

Mr. Lou Bright
General Counsel
Texas Alcoholic Beverage Commission
P.O. Box 13127
Austin, Texas 78711-3127

OR2001-2961

Dear Mr. Bright:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 149221.

The Texas Alcoholic Beverage Commission (the "commission") received a request for records related to a commission administrative case. You state that you have provided the requestor with some of the records. You claim that the remainder of the requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered your claims and reviewed the submitted information.

We first address your arguments under section 552.101. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. You argue that the social security numbers in the submitted information are excepted by section 552.101 in conjunction with section 51.251 of the Occupations Code. A note following section 51.251 of the Occupations Code provides the following:

[t]he social security number of an applicant for or holder of a license, certificate of registration, or other legal authorization issued by a licensing agency to practice in a specified occupation or profession that is provided to the licensing agency is confidential and is not subject to disclosure under the open records law.

The submitted information contains the social security number of an individual who holds a seller/server training certificate issued under the authority of the commission, as well as the social security number of a licensee. We conclude that the social security numbers provided to the commission must be withheld under section 552.101 of the Government Code in conjunction with section 51.251 of the Occupations Code.

We also note that the submitted documents contain the social security numbers of individuals who are not permittees or licensees. These social security numbers may also be excepted from required public disclosure under section 552.101 of the Government Code in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if they were obtained or are maintained by the commission pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). Prior to releasing any social security number information subject to the 1990 amendments to the federal Social Security Act, you should ensure that no such information was obtained or is maintained by the commission pursuant to any provision of law, enacted on or after October 1, 1990.

We also note that a new exception added to the Public Information Act makes credit card numbers confidential.¹ Section 552.136 states in pertinent part:

...

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Therefore, the credit card numbers you have marked must be withheld pursuant to section 552.136 of the Government Code. We have also marked additional credit card numbers that must be withheld under section 552.136.

You also contend that driver's license numbers must be withheld under section 552.130 of the Government Code. Section 552.130(a) of the Government Code excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. Therefore, you must withhold the Texas driver's license numbers and copies of Texas driver's licenses we have marked under section 552.130(a) of the Government Code.

Finally, you claim that attachment D is excepted from disclosure under section 47 of article 6701d, V.T.C.S. However, the submitted boating accident report is not a report

¹ Act of May 14, 2001, 77th Leg., R.S., S.B. 694, § 1 (to be codified at Gov't Code § 552.136)

completed pursuant to the cited statute. In addition, the statute applies to information maintained by the Texas Department of Public Safety or a law enforcement agency employing a peace officer who made the report. *See* V.T.C.S. art. 6701d, § 47(a), (b); Act of May 27, 1995, 74th Leg., R.S., ch. 894, § 1, 1995 Tex. Gen. Laws 4413.² The commission is not the law enforcement agency that employed the peace officer who made the report. Therefore, the commission must release attachment D, subject to the other exceptions cited herein.

In conclusion, you must withhold the highlighted and marked social security numbers under section 552.101 in conjunction with 51.251 of the Occupations Code. In addition you must withhold the additional social security numbers we have marked under section 552.101 in conjunction with section 405(c)(2)(C)(viii)(I) of Title 42 of the United States Code if they were obtained or are maintained by the commission pursuant to any provision of law enacted on or after October 1, 1990. The commission must also withhold the Texas driver's license numbers and the copies of the Texas driver's licenses we have marked under section 552.130 of the Government Code. Finally, you must withhold the credit card numbers under section 552.136 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental

² We note that the text of amended section 47 of article 6701d is not found in Vernon's Revised Civil Statutes or in the Transportation Code. However, section 47 of article 6701d is published in the 1995 General and Special Laws of the 1995 Legislature at chapter 894, section 1.

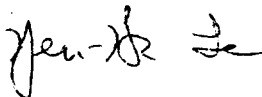
body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/DKB/seg

Ref: ID# 149221

Enc. Marked documents

c: Mr. Guy Jeffress
Fairswift Limited
7272 Wisconsin Avenue
Bethesda, Maryland 20814
(w/o enclosures)